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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JEFFREY KATZ, individually and on) Case No.
behalf of all others similarly situated,)

Plaintiff,)

vs.)

DYANSYS, INC.; SRINI
NAGESHWAR, and DOES 1 through)
10, inclusive,)
Defendant(s).)

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

1. NEGLIGENT VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]
2. WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff, JEFFREY KATZ (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of DYANSYS, INC. and SRINI NAGESHWAR (“Defendants”), in negligently, knowingly, and/or willfully contacting Plaintiff via “telephone

facsimile machine” in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby causing Plaintiff and all others similarly situated to incur the costs of receiving unsolicited advertisement messages via “telephone facsimile machines” and invading their privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendants, a company with its principal place of business and State of Incorporation in Arizona state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants do business within the state of California and Plaintiff resides within this District.

PARTIES

4. Plaintiff, JEFFREY KATZ (“Plaintiff”), is a natural person residing in San Francisco County, California and is a “person” as defined by 47 U.S.C. § 153 (39).

5. Defendant, DYANSYS, INC. (“DYANSYS” or “DEFENDANT”), is a company specializing in chronic pain treatment, and is a “person” as defined by 47 U.S.C. § 153 (39).

6. Defendant, SRINI NAGESHWAR (“NAGESHWAR”), is an owner of the DYANSYS, INC. and a natural person residing in Los Gatos, CA, and is a “person” as defined by 47 U.S.C. § 153 (39).

7. The above named Defendants, and its subsidiaries and agents, are

collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

8. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

9. Beginning in or around April of 2018, Defendants contacted Plaintiff on his telephone facsimile numbers ending in -3052, in an effort to sell or solicit its services.

10. Defendants contacted Plaintiff via facsimile from telephone numbers confirmed to belong to Defendants.

11. Defendants contacted Plaintiff on or around April 2018 in an effort to solicit its business.

12. Defendants’ messages constituted “telephone solicitation” as defined by the TCPA, 47 U.S.C. § 227(a)(4) and “unsolicited advertisement” as defined by the TCPA, 47 U.S.C. § 227(a)(5).

13. Defendants used an “telephone facsimile machine” as defined by 47 U.S.C. § 227(a)(3) to place its calls to Plaintiff seeking to sell or solicit its business services.

14. Defendants’ calls constituted calls that were not for emergency

1 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

2 15. Defendants' communication calls were placed to telephone facsimile
3 numbers assigned to a telephone service for which Plaintiff incurs a charge for
4 incoming messages.

5 16. Plaintiff is not a customer of Defendants' services and has never
6 provided any personal information, including his telephone facsimile number(s), to
7 Defendants for any purpose whatsoever. Accordingly, Defendants never received
8 Plaintiff's "prior express consent" to receive calls using a telephone facsimile
9 machine pursuant to 47 U.S.C. § 227(b)(1)(C).

10 **CLASS ALLEGATIONS**

11 17. Plaintiff brings this action on behalf of himself and all others similarly
12 situated, as a member of the proposed class (hereafter "The Class") defined as
13 follows:

14
15 All persons within the United States who received any
16 telephone facsimile messages from Defendants to said
17 person's telephone facsimile number made through the
18 use of any telephone facsimile machine and such person
19 had not previously consented to receiving such messages

20 18. Plaintiff represents, and is a member of, The Class, consisting of All
21 persons within the United States who received any telephone facsimile messages
22 from Defendants to said person's telephone facsimile number made through the use
23 of any telephone facsimile machine and such person had not previously provided
24 their telephone facsimile number to Defendants within the four years prior to the
25 filing of this Complaint.

26 19. Defendants, its employees and agents are excluded from The Class.
27 Plaintiff does not know the number of members in The Class, but believes the Class
28 members number in the thousands, if not more. Thus, this matter should be certified
as a Class Action to assist in the expeditious litigation of the matter.

1 20. The Class is so numerous that the individual joinder of all of its
2 members is impractical. While the exact number and identities of The Class
3 members are unknown to Plaintiff at this time and can only be ascertained through
4 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
5 The Class includes thousands of members. Plaintiff alleges that The Class members
6 may be ascertained by the records maintained by Defendants.

7 21. Plaintiff and members of The Class were harmed by the acts of
8 Defendants in at least the following ways: Defendants illegally contacted Plaintiff
9 and Class members via their telephone facsimile numbers thereby causing Plaintiff
10 and Class members to incur certain charges or reduced telephone facsimile time for
11 which Plaintiff and Class members had previously paid by having to retrieve or
12 administer messages left by Defendants during those illegal calls, and invading the
13 privacy of said Plaintiff and Class members.

14 22. Common questions of fact and law exist as to all members of The
15 Class which predominate over any questions affecting only individual members of
16 The Class. These common legal and factual questions, which do not vary between
17 Class members, and which may be determined without reference to the individual
18 circumstances of any Class members, include, but are not limited to, the following:

- 19
- 20 a. Whether, within the four years prior to the filing of this Complaint,
21 Defendants sent telephone facsimile messages (other than for
22 emergency purposes or made with the prior express consent of the
23 called party and with an opt-out notice contained in the messages) to a
24 Class member using any telephone facsimile machine to any
25 telephone number assigned to a telephone facsimile service;
- 26 b. Whether Plaintiff and the Class members were damaged thereby, and
27 the extent of damages for such violation; and
- 28 c. Whether Defendants should be enjoined from engaging in such
conduct in the future.

23. As a person who received numerous messages from Defendants using

1 a telephone facsimile machine, without Plaintiff's prior express consent, Plaintiff
2 is asserting claims that are typical of The Class.

3 24. Plaintiff will fairly and adequately protect the interests of the members
4 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
5 class actions.

6 25. A class action is superior to other available methods of fair and
7 efficient adjudication of this controversy, since individual litigation of the claims
8 of all Class members is impracticable. Even if every Class member could afford
9 individual litigation, the court system could not. It would be unduly burdensome
10 to the courts in which individual litigation of numerous issues would proceed.
11 Individualized litigation would also present the potential for varying, inconsistent,
12 or contradictory judgments and would magnify the delay and expense to all parties
13 and to the court system resulting from multiple trials of the same complex factual
14 issues. By contrast, the conduct of this action as a class action presents fewer
15 management difficulties, conserves the resources of the parties and of the court
16 system, and protects the rights of each Class member.

17 26. The prosecution of separate actions by individual Class members
18 would create a risk of adjudications with respect to them that would, as a practical
19 matter, be dispositive of the interests of the other Class members not parties to such
20 adjudications or that would substantially impair or impede the ability of such non-
21 party Class members to protect their interests.

22 27. Defendants have acted or refused to act in respects generally
23 applicable to The Class, thereby making appropriate final and injunctive relief with
24 regard to the members of the California Class as a whole.

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FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

29. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

30. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

32. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

33. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

34. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

35. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against all Defendants for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendants' negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

36. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff reserves their right to a jury on all issues so triable.

Respectfully Submitted this 10th day of February, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff